

Message Text

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ACTION IO-14

INFO OCT-01 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
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LIMITED OFFICIAL USE SECTION 01 OF 04 GENEVA 06371

DEPT PASS TREASURY FOR HAZEN GALE
D/LOS PASS SEBENIUS

E.O. 11652: N/A
TAGS: PLOS
SUBJECT: FINANCIAL ARRANGEMENTS - US DELEGATION DRAFT
REVISION 3, APRIL 26, 1978

BEGIN TEXT:

(7. (A) IN ADOPTING RULES, REGULATIONS AND PROCEDURES
CONCERNING THE FINANCIAL TERMS OF A PLAN OF WORK, THE
AUTHORITY SHALL BE GUIDED BY THE FOLLOWING OBJECTIVES:

(I) TO ENSURE OPTIMUM REVENUES FOR AUTHORITY FROM
THE PROCEEDS OF COMMERCIAL EXPLOITATION;

(II) TO ATTRACT INVESTMENTS AND TECHNOLOGY INTO THE
EXPLORATION AND EXPLOITATION OF THE AREA;

(III) TO ENSURE EQUALITY OF FINANCIAL TREATMENT AND
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COMPARABLE FINANCIAL OBLIGATIONS AMONG ALL
SEABED MINING OPERATIONS;

(B) A FEE SHALL BE LEVIED FOR THE ADMINISTRATIVE
COST OF PROCESSING AN APPLICATION FOR PLAN OF WORK AND
SHALL BE FIXED AT AN AMOUNT OF \$Q PER APPLICANT. THIS
FEE SHALL BE LEVIED ONLY ONCE PER APPLICANT.

(C) FINANCIAL CONTRIBUTIONS TO THE AUTHORITY SHALL
BE AS FOLLOWS:

(I) CONTRIBUTIONS SHALL BE MADE UP OF THE COST OF
PROSPECTING THE RESERVED SITE AS SPECIFIED IN PARAGRAPH
5J(I), AN ANNUAL FIXED CHARGE TO MINE, A PRODUCTION CHARGE,
AND A SHARE OF NET PROCEEDS OR A SHARE OF GROSS REVENUES
DEEMED TO REPRESENT A SHARE OF NET PROCEEDS. THE COST
OF PROSPECTING THE RESERVED SITE SHALL BE CREDITED
UNTIL DEPLETION AGAINST THE ANNUAL FIXED CHARGE TO MINE;

(II) THE AUTHORITY SHALL NOT ESTABLISH ANY FEES
OR CHARGES OTHER THAN THOSE DETERMINED UNDER (C)(I)
ABOVE AND THE FEE REFERRED TO IN SUBPARAGRAPH (B) ABOVE.

(III) PAYMENT OF THE PRODUCTION CHARGE AND SHARE OF
NET PROCEEDS OR SHARE OF GROSS REVENUES SHALL BE MADE
UPON THE START OF COMMERCIAL EXPLOITATION AND SHALL BE
PAID AT THE END OF EACH ACCOUNTING PERIOD OR AS
MUTUALLY AGREED BETWEEN THE OPERATOR AND THE AUTHORITY.
COMMERCIAL EXPLOITATION MEANS ANY ACTIVITY ENGAGED
IN AT SEA TO LIFT ANY HARD MINERAL RESOURCES AT A
SUBSTANTIAL RATE, WITHOUT REGARD TO PROFIT OR LOSS, FOR
THE PRIMARY PURPOSE OF MARKETING OR COMMERCIALY USING
SUCH RESOURCE.
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(IV) ALL COSTS AND REVENUES SHALL BE THE RESULT OF
A FREE MARKET TRANSACTION OR TAKE PLACE AT ARM'S
LENGTH. IF THE AUTHORITY BELIEVES THAT THE COSTS AND
REVENUES ARE NOT THE RESULT OF FREE MARKET OR ARM'S
LENGTH TRANSACTIONS, THEY SHALL BE COMPUTED BY THE
AUTHORITY AS THOUGH THEY TOOK PLACE AT ARM'S LENGTH
OR WERE THE RESULT OF FREE MARKET TRANSACTIONS. IN
DETERMINING THE VALUE OF ANY ARM'S LENGTH TRANSACTIONS
OR FREE MARKET TRANSACTIONS, THE AUTHORITY SHALL USE THE
VALUE OF A SIMILAR TRANSACTION TAKING PLACE IN OTHER
MARKETS WHERE FREE MARKET FORCES OR ARM'S LENGTH
TRANSACTIONS HAVE PREVAILED.

(V) IN ORDER TO ENSURE THAT ALL COSTS AND REVENUES
ARE THE RESULT OF FREE MARKET TRANSACTIONS OR TAKE PLACE
AT ARM'S LENGTH AND TO ENSURE ENFORCEMENT OF AND
COMPLIANCE WITH THE PROVISIONS OF THIS PARAGRAPH, THE
AUTHORITY SHALL ADOPT RULES AND REGULATIONS SPECIFYING
UNIFORM AND GENERALLY ACCEPTABLE ACCOUNTING RULES AND
PROCEDURES TO BE FOLLOWED BY THE OPERATOR AND THE MEANS
OF SELECTION BY THE OPERATOR OF CERTIFIED INDEPENDENT

ACCOUNTANTS ACCEPTABLE TO THE AUTHORITY FOR THE PURPOSE
OF AUDITING COMPLIANCE WITH SAID RULES AND REGULATIONS.
THE OPERATOR SHALL MAKE AVAILABLE TO THE INDEPENDENT
ACCOUNTANTS, IN ACCORDANCE WITH RULES AND REGULATIONS,
SUCH FINANCIAL DATA AS ARE REQUIRED TO DETERMINE
COMPLIANCE WITH THIS PARAGRAPH. IN THE EVENT OF A
DISPUTE BETWEEN THE AUTHORITY AND AN OPERATOR OVER THE
FINANCIAL TERMS OF A PLAN OF WORK, EITHER PARTY MAY
REQUEST RESOLUTION OF THE DISPUTE THROUGH COMPULSORY AND
BINDING COMMERCIAL ARBITRATION. IN ACCORDANCE WITH
ARTICLE 139, PARAGRAPH 1, STATES PARTIES SHALL ENSURE
THAT THEY, THEIR VENTURES, PERSONS NATURAL OR JURIDICAL
WHICH POSSESS THE NATIONALITY OF STATES PARTIES OR ARE
EFFECTIVELY CONTROLLED BY THEM OR BY THEIR NATIONALS
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DEPT PASS TREASURY FOR HAZEN GALE
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SHALL COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.
NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBPARAGRAPH
SHALL RENDER STATES PARTIES LIABLE IN ACCORDANCE WITH

ARTICLE 130, PARAGRAPH 1 AND SHALL RENDER OPERATORS
LIABLE IN ACCORDANCE WITH ANNEX I, PARAGRAPHS (4) AND
(12).

(D) ANNUAL FIXED CHARGE, PRODUCTION CHARGE AND SHARE
OF NET PROCEEDS OR SHARE OF GROSS REVENUES DEEMED TO
REPRESENT A SHARE OF NET PROCEEDS:

(I) AN ANNUAL FIXED CHARGE TO MINE IN A SPECIFIED
AREA WITH RESPECT TO EACH ACCOUNTING YEAR OR PORTION
THEREOF THAT RIGHTS ARE HELD UNDER A PLAN OF WORK FOR
COMMERCIAL EXPLOITATION SHALL BE PAID TO THE AUTHORITY.
THE CHARGE SHALL BE FIXED AT \$R PER ANNUM FOR EACH
PLAN OF WORK. THIS ANNUAL CHARGE SHALL BEGIN FIVE
YEARS FOLLOWING THE DATE UPON WHICH THE PLAN OF WORK COMES
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INTO EFFECT AND THEREAFTER THE CHARGE SHALL BE CREDITED
AGAINST THE PRODUCTION CHARGE UNDER (II) BELOW PAID IN THE
SAME ACCOUNTING YEAR.

(II) A PRODUCTION CHARGE IS EITHER OF THE FOLLOWING:

-- 3.75 PERCENT OF THE IMPUTED VALUE OF THE HARD
MINERAL RESOURCES RECOVERED FOR SALE BY THE OPERATOR
FROM THE DEEP SEABED. FOR THE PURPOSE OF THIS SECTION,
SAID IMPUTED VALUE OF HARD MINERAL RESOURCES FOR A
GIVEN ACCOUNTING PERIOD SHALL BE 1/5 OF THE PROCEEDS OF
SALS OF HE METALS OR MINERALS FROM THE HARD MINERAL
RESOURCES IN THE MOST BASIC FORM IN WHICH SUCH METALS
OR MINERALS ARE CUSTOMARILY TRADED OR IN THE FOLLOWING
FORMS: FERRO-NICKEL, COBALT METAL 99 PERCENT PLUS,
COPPER METAL REFINED, AND MANGANESE ORE. THE AVERAGE
PRICE OF THE METALS OR MINERALS FROM THE HARD MINERAL RE-
SOURCES SHALL BE PROVIDED BY AN INTERNATIONAL COMMODITY
EXCHANGE OR THE AVERAGE VALUE OF IMPORTED METALS OR
MINERALS BY THE MAJOR IMPORTER OF SUCH METALS OR MINERALS.

-- 3.75 PERCENT OF THE MARKET VALUE OF THE DRY
NODULES AT THE MINE SITE WHEN A FREE MARKET HAS BEEN
ESTABLISHED.

IN ANY ACCOUNTING PERIOD, THE OPERATOR MAY CHOOSE
TO PAY EITHER OF THE FOREGOING CHARGES IN D(II) WHEN A
FREE MARKET FOR NODULES HAS BEEN ESTABLISHED.

THE PRODUCTION CHARGE SHALL BE CREDITED AGAINST
THE SHARE OF NET PROCEEDS OR GROSS REVENUES SPECIFIED
BELOW, PAID IN THE SAME ACCOUNTING YEAR.

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(III) A SHARE OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION SHALL BE PAID TO THE AUTHORITY BY AN OPERATOR ACCORDING TO THE RATE OF RETURN ON INVESTMENT AS SET OUT BELOW.

A. PROCEEDS SHALL BE DEFINED AS THE GROSS REVENUES FROM THE SALE OF THE PROCESSED METALS AND MINERALS OR, IF THE AUTHORITY DETERMINES THAT A MARKET FOR NODULES EXISTS, THE OPERATOR MAY ELECT TO HAVE THE GROSS REVENUES DETERMINED BY THE PROCEEDS OF THE SALE OF SUCH NODULES; IN THIS CASE, ALL PROCEEDS AND COSTS OF COMMERCIAL EXPLOITATION SHALL BE CALCULATED DIRECTLY INSTEAD OF USING THE RATIO CALCULATED IN PARAGRAPH C BELOW. PROCEEDS ALSO INCLUDE ANY REVENUES FROM THE DISPOSAL OF CAPITAL ASSETS LESS THE BOOK VALUE AT THE TIME OF DISPOSAL.

B. NET PROCEEDS SHALL BE DEFINED AS PROCEEDS, LESS OPERATING COSTS, LESS INVESTMENT RECOVERY. OPERATING COSTS FOR A GIVEN ACCOUNTING PERIOD SHALL BE DEDUCTIBLE IN THE ACCOUNTING PERIOD IN WHICH THEY OCCUR. ANY OPERATING LOSSES FROM PREVIOUS ACCOUNTING PERIODS SHALL ALSO BE CARRIED FORWARD AND BACKWARD AS SPECIFIED IN THE RULES AND REGULATIONS OF THE AUTHORITY. ANY INTEREST PAID OR RECEIVED AFTER THE COMMENCEMENT OF COMMERCIAL EXPLOITATION SHALL NOT BE INCLUDED IN THE CALCULATION OF THE NET PROCEEDS.

C. NET PROCEEDS FROM COMMERCIAL EXPLOITATION FOR A GIVEN ACCOUNTING PERIOD SHALL BE DETERMINED BY THE RATIO OF THE DEVELOPMENT COSTS DIRECTLY ATTRIBUTABLE TO COMMERCIAL EXPLOITATION DIVIDED BY TOTAL DEVELOPMENT COSTS AND MULTIPLYING THAT RATIO BY THE NET PROCEEDS AS CALCULATED IN PARAGRAPH B ABOVE. THE RATIO SHALL BE RECALCULATED FOR EACH ACCOUNTING PERIOD.

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D. THE COSTS INCURRED BY THE OPERATOR USED TO DETERMINE NET PROCEEDS IN RESPECT OF THOSE OPERATIONS SHALL COMPRISE THE FOLLOWING:

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DEPT PASS TREASURY FOR HAZEN GALE
D/LOS PASS SEBENIUS

1. DEVELOPMENT COSTS: THAT IS ALL EXPENDITURES
INCURRED PRIOR TO THE COMMENCEMENT OF COMMERCIAL
PRODUCTION INCLUDING, INTER ALIA, THE APPLICATION FEE,
COSTS OF MACHINERY, EQUIPMENT, SHIPS, EXPLORATION AND
FEASIBILITY STUDIES AND OTHER RESEARCH AND DEVELOPMENT,
CONSTRUCTION, INTEREST EXPENSES PAID PRIOR TO THE
START OF COMMERCIAL EXPLOITATION, REQUIRED LEASES,
LICENSES, AND SUBSEQUENT TO THE COMMENCEMENT OF
COMMERCIAL PRODUCTION, SIMILAR COSTS REQUIRED FOR THE
REPLACEMENT OF EQUIPMENT AND MACHINERY, MAINTENANCE
AND IMPROVEMENT OF PRODUCTIVE CAPACITY LESS PROCEEDS
FROM THE DISPOSAL OF CAPITAL ASSETS;

2. OPERATING COSTS: THAT IS ALL EXPENDITURES
INCURRED IN THE COMMERCIAL OPERATION INCLUDING, INTER
ALIA, EXPENDITURES FOR WAGES, SALARIES, EMPLOYEE
BENEFITS, PAYROLL TAXES, TAXES ON ASSETS, SALES TAXES
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AND CUSTOMS DUTIES ON THE EQUIPMENT, SUPPLIERS,
MATERIALS, SERVICES TRANSPORTATION, SALE OF PRODUCTS,

UTILITIES, PURCHASES, AND OVERHEAD AND ADMINISTRATIVE COSTS SPECIFICALLY RELATED TO OPERATIONS OF THE PLAN OF WORK, ANY NET OPERATING LOSSES CARRIED FORWARD AND BACKWARD AS SPECIFIED IN THE RULES AND REGULATIONS OF THE AUTHORITY, FROM PRIOR ACCOUNTING PERIODS, AND CAPITAL LOSSES INCURRED DURING THE RELEVANT ACCOUNTING PERIOD.

E. INVESTMENT RECOVERY SHALL BE DEFINED AS A DEPRECIATION CHARGE ON SUCH PERCENTAGE BASIS PER ANNUM AS DETERMINED BY RULES AND REGULATIONS OF THE AUTHORITY. THE RULES AND REGULATIONS SHALL PROVIDE FOR COMPLETE RECOVERY OF EXPENSES CLASSIFIED AS "DEVELOPMENT COSTS" WITHIN FIVE FULL ACCOUNTING PERIODS FOLLOWING THE COMMENCEMENT OF COMMERCIAL EXPLOITATION.

F. THE INTEREST EXPENSES OF THE OPERATOR FOR FINANCING THE COMMERCIAL EXPLOITATION FOR A GIVEN ACCOUNTING PERIOD SHALL BE DETERMINED BY THE RATIO OF DEVELOPMENT COSTS DIRECTLY ATTRIBUTABLE TO COMMERCIAL EXPLOITATION DIVIDED BY TOTAL DEVELOPMENT COSTS AND MULTIPLYING THAT RATIO BY THE INTEREST EXPENSES IN THE SAME ACCOUNTING PERIOD FOR FINANCING THE TOTAL PROJECT AFTER THE COMMENCEMENT OF COMMERCIAL EXPLOITATION.

G. IN EACH YEAR, THE SHARE OF NET PROCEEDS TO BE RECEIVED BY THE AUTHORITY SHALL BE DETERMINED ACCORDING TO THE RATE OF RETURN ON THE CONTRACTOR'S INVESTMENT FOR COMMERCIAL EXPLOITATION. THE RATE OF RETURN ON THE OPERATOR'S INVESTMENT SHALL BE CALCULATED BY DIVIDING THE SUM OF THE OPERATOR'S PORTIONS OF THE NET PROCEEDS LIMITED OFFICIAL USE

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FROM COMMERCIAL EXPLOITATION IN ALL PRECEDING ACCOUNTING PERIODS BY THE TOTAL NUMBER OF COMPLETED ACCOUNTING PERIODS FROM THE DATE OF COMMENCEMENT OF COMMERCIAL EXPLOITATION, AND EXPRESSING THIS AVERAGE AS A PERCENTAGE OF DEVELOPMENT COSTS DIRECTLY ATTRIBUTABLE TO COMMERCIAL EXPLOITATION. THE COSTS AND PROCEEDS FIGURES USED TO CALCULATE THE RATE OF RETURN ON THE OPERATOR'S INVESTMENT SHALL BE EXPRESSED IN CONSTANT TERMS.

H. THE NET PROCEEDS OF COMMERCIAL EXPLOITATION SHALL BE ALLOCATED ON AN INCREMENTAL BASIS AMONG THE THREE INCREMENTS, IF APPLICABLE, SPECIFIED BELOW:

-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON INVESTMENT OF 15 PERCENT OR LESS SHALL BE REFERRED TO

AS "LOW";

-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON INVESTMENT LARGER THAN 15 PERCENT BUT EQUAL OR LESS THAN 20 PERCENT SHALL BE REFERRED TO AS "MEDIUM";

-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON INVESTMENT GREATER THAN 20 PERCENT SHALL BE REFERRED TO AS "HIGH".

I. THE NET PROCEEDS AFTER INTEREST OF COMMERCIAL EXPLOITATION SHALL BE CALCULATED IN THE FOLLOWING MANNER; THE INTEREST ON COMMERCIAL EXPLOITATION, AS CALCULATED IN F, SHALL BE SUBTRACTED FROM THE NET PROCEEDS OF COMMERCIAL EXPLOITATION, AS CALCULATED IN C. IN DOING SO, THE AMOUNT OF INTEREST ON COMMERCIAL EXPLOITATION SHALL BE ALLOCATED AMONG THE INCREMENTS SPECIFIED IN PARAGRAPH H ABOVE IN THE SAME PROPORTION
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AS THE NET PROCEEDS ARE ALLOCATED AMONG THE INCREMENTS.

J. THE AUTHORITY SHALL BE ENTITLED TO A SHARE OF

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DEPT PASS TREASURY FOR HAZEN GALE
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THE NET PROCEEDS AFTER INTEREST OF COMMERCIAL EXPLOITATION APPLIED ON AN INCREMENTAL BASIS ACCORDING TO THE RATE SPECIFIED BELOW:

-- THE AMOUNT OF NET PROCEEDS AFTER INTEREST OF COMMERCIAL EXPLOITATION IN THE INCREMENT "LOW" SHALL BE SHARED WITH THE AUTHORITY AT A RATE OF X PERCENT;

-- THE AMOUNT OF NET PROCEEDS AFTER INTEREST OF COMMERCIAL EXPLOITATION IN THE INCREMENT "MEDIUM" SHALL BE SHARED WITH THE AUTHORITY AT A RATE OF Y PERCENT;

-- THE AMOUNT OF NET PROCEEDS AFTER INTEREST OF COMMERCIAL EXPLOITATION IN THE INCREMENT "HIGH" SHALL BE SHARED WITH THE AUTHORITY AT A RATE OF Z PERCENT.

(IV)A. THE OPERATOR MAY ELECT, PRIOR TO APPROVAL OF THE PLAN OF WORK, TO PAY TO THE AUTHORITY A SHARE
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OF GROSS REVENUES DEEMED TO REPRESENT A SHARE OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION AS STIPULATED UNDER THE METHOD SET OUT IN LITRA (III) OF THIS SUB-PARAGRAPH. THE SHARE OF GROSS REVENUES SHALL BE MUTUALLY AGREED BETWEEN THE AUTHORITY AND THE OPERATOR.

B. FOR THE PURPOSE OF A ABOVE, GROSS REVENUES DERIVED FROM COMMERCIAL EXPLOITATION SHALL BE DEFINED AS 20 PERCENT OF THE MARKET VALUE OF METALS OR MINERALS TO BE PROCESSED FOR SALE CONTAINED IN THE NODULES RECOVERED FROM THE SITE.

C. IN THE EVENT A PLAN OF WORK CALLING FOR THE PAYMENT OF A SHARE OF GROSS REVENUES DEEMED TO REPRESENT A SHARE OF NET PROCEEDS IS CONCLUDED, ALL OTHER OPERATORS THEN OPERATING PURSUANT TO PREVIOUS PLANS OF WORK, WHETHER THEIR FINANCIAL ARRANGEMENTS CALL FOR A SHARE OF NET PROCEEDS OR A SHARE OF GROSS REVENUES, SHALL BE ENTITLED TO ELECT TO MAKE PAYMENTS OF A SHARE OF GROSS REVENUES AT IDENTICAL RATES AS THOSE CALLED FOR IN THE SAID PLAN OF WORK. NOTICE OF SUCH ELECTION MAY BE GIVEN AT ANY TIME TO THE AUTHORITY WITHIN TWO YEARS FROM THE DATE THAT SAID PLAN OF WORK HAS BEEN APPROVED BY THE AUTHORITY AND HAS BEEN ANNOUNCED. PAYMENTS UNDER SUCH AN ELECTION SHALL BE MADE RELATIVE TO THE FIRST FULL ACCOUNTING PERIOD BEGINNING AFTER

THE ELECTION.

(E)(I) THE AMOUNTS REFERRED TO IN SUBPARAGRAPH (B) AND
SUBPARAGRAPH (D)(I) MAY BE REVISED EVERY FIVE YEARS
THROUGH RULES AND REGULATION TO ADJUST FOR INFLATION.
ONCE A PLAN OF WORK HAS BEEN SUBMITTED OR APPROVED, THE
AMOUNTS REFERRED TO IN SUBPARAGRAPH (B) AND (D)(I) SHALL
NOT BE INCREASED.

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(II) THE PAYMENTS TO THE AUTHORITY UNDER (II),
(III) AND (IV) OF SUBPARAGRAPH (D) ABOVE MAY BE MADE
EITHER IN A CURRENCY AGREED UPON BETWEEN THE AUTHORITY
AND THE OPERATOR, OR IN THE EQUIVALENTS OF PROCESSED
METALS AT CURRENT MARKET VALUE. THE MARKET VALUE SHALL
BE ASCERTAINED IN ACCORDANCE WITH (II) OF SUBPARAGRAPH
(D) ABOVE. END TEXT.

THE ABOVE TEXT IS A DRAFT FINANCIAL ARRANGEMENT WHICH HAS
BEEN DISCUSSED WITH MEMBERS OF THE CANADIAN, EC, G-5
DELEGATION. ALL NUMBERS ARE ONLY ILLUSTRATIVE. RICHARDSON

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